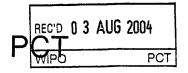
PATENT COOPERATION TREATY

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From the INTERNATIONAL SEARCHING AUTHORITY

To:	 	 	



see form PCT/ISA/220

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date	of	mai	lina

(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference see form PCT/ISA/220

FOR FURTHER ACTION

See paragraph 2 below

International application No. PCT/EP2004/050315

International filing date (day/month/year)

Priority date (day/month/year)

17.03.2004

27.03.2003

International Patent Classification (IPC) or both national classification and IPC C07D211/94, C07C291/04, C07B43/00, C07B33/00

Applicant

CIBA SPECIALTY CHEMICALS HOLDING INC.

1.	This	opinion	contains	indications	relating to	the fo	llowing iter	ne.

☑ Box No. I

Basis of the opinion

☑ Box No. II

Priority

☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

☐ Box No. IV

Lack of unity of invention

Box No. V

Reasoned statement under Rule 43bis.1(a)(l) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

☐ Box No. VI Certain documents cited

☐ Box No. VII Certain defects in the international application

Box No. VIII Certain observations on the international application

FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notifed the International Bureau under Rule 66.1 bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:

Authorized Officer

European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465

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WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

International application No. PCT/EP2004/050315

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	Box N	lo. I Basis of the opinion					
1.	. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was field, unless otherwise indicated under this item.						
	la	his opinion has been established on the basis of a translation from the original language into the following nguage , which is the language of a translation furnished for the purposes of international search under Rules 12.3 and 23.1(b)).					
2.	With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:						
	a. type	of material:					
		a sequence listing					
		table(s) related to the sequence listing					
	b. forn	nat of material:					
		in written format					
		in computer readable form					
	c. time	of filing/furnishing:					
		contained in the international application as filed.					
		filed together with the international application in computer readable form.					
		furnished subsequently to this Authority for the purposes of search.					
3.	ha co	addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto as been filed or furnished, the required statements that the information in the subsequent or additional upies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.					
4.	Additio	onal comments:					

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

International application No. PCT/EP2004/050315

	Box No. II	Priority				
1.	. The following document has not been furnished:					
	⊠	copy of the earlier a	pplication	n whose p	riority has been claimed (Rule 43bis.1 and 66.7(a)).	
		translation of the ea	ırlier appl	lication wh	ose priority has been claimed (Rule 43bis.1 and 66.7(b)).	
					ider the validity of the priority claim. This opinion has tion that the relevant date is the claimed priority date.	
2.	has be		les 43 <i>bis</i>	.1 and 64.1	ority had been claimed due to the fact that the priority claim 1). Thus for the purposes of this opinion, the international the relevant date.	
3.	Additional of	observations, if neces	ssary:			
	Box No. V industrial				3 <i>bis</i> .1(a)(i) with regard to novelty, inventive step or one supporting such statement	
1.	Statement					
	Novelty (N)		Yes: No:	Claims Claims	1-10	
	Inventive st	tep (IS)	Yes: No:	Claims Claims	1-10	
	Industrial a	pplicability (IA)	Yes: No:	Claims Claims	1-10	
2.	Citations ar	nd explanations				

see separate sheet

Re Item V.

D1: US 6 538 141 B1 (GUERRET OLIVIER ET AL) 25 March 2003 (2003-03-25)

D2: DE 16 95 749 A (SANKYO CO) 22 April 1971 (1971-04-22)

The present application is directed to a process for the preparation secondary nitroxide radicals from their corresponding secondary amines by oxidation with an organic peracid, comprising the steps a) adding to a reaction vessel a secondary amine, optionally together with an organic solvent and in one batch a base selected from the group selected of alkali metal, alkaline earth metal or ammonium bicarbonates and earth alkaline earth or ammonium carbonates or mixtures thereof in form of a solid together with water or as an aqueous slurry; b) dosing a peracid under stirring to the reaction mixture in an amount of 1.0 - 2.5 mol per mol of secondary amine; and c) isolating the organic phase.

Document D1, which is considered to represent the most relevant state (cf. passages cited in the ISR) differs form the subject matter of the present application insofar that the organic peracid and the base K₂CO₃ are added to the amine simultaneously and not in one batch but continuously upon stirring.

The problem to be solved by the present invention may, therefore, be regarded as the provision of a further process for the preparation secondary nitroxide radicals.

In view of D1 and that only two reagents and/or additives are involved, the skilled person is considered to be capable of modifying the manner of reagents addition to the reaction vessel without exercising any inventive skills in order to solve the problem posed.

The feature of adding the base before the peracid in one batch shows, however, the same effect of avoiding protonation of the secondary amine function, which would decrease the oxidation rate.

Dependent claims 2-10 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty and/or inventive step (Article 33(2) and (3) PCT).

Thus, the subject matter of claims 1-10 does not fulfil the criteria of Article 33(3) PCT.